

THE NEWS OF NORFOLK ON PAGES 2, 3, 5 AND 8.

COURT DECISIONS.

Notes of Cases Recently Decided,
Which are of Interest to
Our People.

DIGESTED BY W. B. MARTIN.
(Exclusively for Virginian-Pilot.)

LAUDIE V. WESTERN U. TEL. CO.
Supreme Court of North Carolina,
April 25, 1899.

WHERE, A HUSBAND, FOR HIS WIFE'S BENEFIT, TELEGRAPHS IN HIS OWN NAME, THE DEATH OF THEIR CHILD, AND REQUESTS ADDRESSEE TO PREPARE GRAVE AND MEET THE BODY, HIS FAILURE TO NOTIFY COMPANY THAT TELEGRAM WAS FOR HIS WIFE'S BENEFIT WILL NOT PRECLUDE HER FROM RECOVERING FOR MENTAL SUFFERING CAUSED BY FAILURE TO DELIVER.

This was an action by a husband and wife against the telegraph company for damages for mental anguish suffered by the wife caused by its failure to deliver a telegram, and by the assurance of the company that said telegram had been delivered, when in fact it had not been delivered. The infant child of the plaintiffs had died and the husband, by an agreement with his wife, and for her benefit, delivered to the company a telegram to a relative asking him to meet the body and prepare a grave. He also notified the agent that it was an important matter relating to the burial of the child. The agent assured him that it would be forwarded immediately, and to be sure of delivery, the said Laudie went back to the office of the company about 12 o'clock on the same day, and was assured by it that the message had been delivered to its destination. He thereupon informed his wife, the feme plaintiff, and she, acting and relying upon said representations of the defendant, prepared the body of her infant, and started with it to Wadesboro on the morning of May 25th, reaching that point about 7 o'clock a. m., expecting to be met there in accordance with said telegram. The said message was not delivered on May 24th, as assured by the company, but not until the following day, too late for any one to meet the feme plaintiff. On account of the non-delivery, she had to remain for several hours at the depot in Wadesboro, alone with the dead body of her infant, and then make arrangements to carry the same across the country to Chesterfield, by which she suffered great mental anguish, as she alleged. The feme plaintiff, in order to maintain her action, proposed to show that the message was sent by an agreement with her, and for her benefit, and that she was the undisclosed principal, which the court refused to permit. To this ruling the plaintiff excepted, submitted to a nonsuit and appealed.

The court says:
The only point presented to this court by the distinguished counsel who frankly admitted that it was covered by the case of *Cashion v. Telegraph Co.* (at this term) was that of an undisclosed principal. It is due to them to say that the *Cashion* case had not been decided when the appeal was taken. We see no reason to reverse our ruling in that case, and therefore hold that the plaintiff is not debarred from a recovery because her name was not signed to the telegram, and the defendant was not notified that it was sent by her direction or for her benefit. The facts as presented to us in this appeal are stronger than those in the *Cashion* case, and therefore bring this case more clearly within the rule. Even if the male plaintiff had not notified the defendant of the urgency of the message, its importance clearly appeared upon its face; and the negligence of the de-

fendant in failing to deliver it was aggravated by its negligent assurance that it had been delivered. We have decided this question upon what we believe to be true legal principles, but let us gauge it for a moment by the rule of common sense. The male plaintiff left his wife alone at home with the dead body of their child, and went to the telegraph office to send a message to a relative to prepare the grave and meet the body. Suppose we had found him doing what the defendant says he should have done—coolly and deliberately informing the defendant that he was the agent of one M. B. Laudie, that he sent the telegram by her direction and for her benefit, and that "she had then in contemplation" heavy damages for great mental anguish, which would probably result from a failure to promptly deliver the telegram. Would it not have tended to raise in the minds of the jury a suspicion of speculation? While it might have come within the rule of *Hadley v. Baxendale*, 9 Exch. 341, would it be within the ordinary rule of human conduct? Would we expect such care and deliberation on the part of a father or a mother under such circumstances, and would it be reasonable in us to require it? The telegram is not intended solely for lawyers, nor for those skilled in business or experienced in litigation. It is intended for the general public, and must meet for their reasonable convenience. Moreover, the defendant, as a common carrier, owed to the plaintiff a public duty, which it should have performed with reasonable care and diligence. It cannot be relieved from liability for the proximate results of its own negligence. If it existed, by unreasonable regulations or technical objections. For error in the intimation of his hour, the judgment of nonsuit must be set aside, and a new trial ordered. New trial.

WILSON V. CARTER OIL CO.
Supreme Court of Appeals of West Virginia,
April 15, 1899.

WHEN A CORPORATION AND AN INDIVIDUAL ASSUMED TO ENTER INTO PARTNERSHIP THEY MAY RECOVER ON OBLIGATIONS MADE TO THEM IN THEIR FIRM NAME.

IN ASSUMPT WHERE PLAINTIFFS ARE DESCRIBED AS PARTNERS, BUT HAVE A JOINT INTEREST, SUCH DESCRIPTION IS SURPLUSAGE.
This was a suit by one Wilson and the Devonian Oil Co., a corporation doing business under the firm name of L. C. Wilson & Co., for \$512 for work, &c., for the defendant. The defendant claimed they could not recover, because the plaintiff corporation, under the laws of Pennsylvania, where it was chartered, could not legally form a partnership with any other firm, and the lower court sustained this contention and plaintiffs appealed.

The court says:
The sole question, then, presented for consideration by this record, is whether the Circuit Court erred in sustaining said plea and dismissing plaintiffs' action. As to the question whether a corporation can form a partnership with an individual, the authorities are conflicting. It is believed that the weight of authority is to the effect that a corporation cannot form a partnership with an individual. In 7 Am. & Eng. Enc. Law the law is stated thus: "A corporation has no power to form a partnership with an individual, unless authorized to do so by its charter." And in *Morawetz on Corporations* (section 421) thus: "It seems clear that corporations are not impliedly authorized to enter into partnership with other companies or with individuals." And *Beach, Priv. Corp.* section 842, says: "One firm may be a partner with another firm, and there is no general principle of law which prevents a corporation from being a partner with another corporation or with ordinary individuals, except the principle that a corporation cannot

lawfully employ its funds for purposes not authorized by its constitution. Having regard, however, to this principle, it may be considered as prima facie ultra vires for an incorporated company to enter into a partnership with other persons." Also, in 7 Am. & Eng. Enc. Law (New Ed.) 794, it is said: "By the decided weight of authority, a corporation has no power to enter into an ordinary contract of partnership with another corporation, or an individual or individuals, unless such power is expressly conferred upon it by its charter."

The question presented by the record in this case is not limited to the mere inquiry whether a corporation can form a partnership with an individual, but whether the defendant's plea constitutes a good defense to this action. In other words, if the plaintiffs were not partners in the strict sense of the word, can we say their recovery in this action is necessarily defeated? In *Courson v. Parker*, this court held that: "At common law, partners cannot be sued otherwise than in their individual names, and the allegation of a partnership name is merely for the purpose of identification and description, is immaterial, and need not be proven; and hence the unnecessary use of it may be regarded as mere surplusage." The same rule would apply to plaintiffs as defendants, and in the case at bar the portion of the declaration describing the plaintiffs as partners may be treated as surplusage.

In 2 *Beach, Priv. Corp.* p. 1317, section, it is said: "The results of partnership arrangements between corporations and individuals have been subjected to the rules governing partnerships and their contracts enforced, even where the agreement has not been upheld. Accordingly, where a corporation and an individual have assumed to enter into partnership and jointly transact business together, they may, by reason of their joint interest, recover upon obligations made to them in their partnership name, irrespective of their partnership rights and duties as between themselves, or the capacity of the association to execute incident to a partnership." A case directly in point is that of *Frederick v. Donahue*, 29 Minn., 111, in which the court holds that "where an association or corporation and another have assumed to enter into a partnership, and jointly transacted business together, they may recover, by reason of their joint interest, upon obligations made to them in their partnership name, irrespective of their partnership rights and duties as between themselves, or the power of such association to execute the powers incident to a partnership."

When the declaration in the case under consideration is relieved of its surplusage, it only claims that the defendant is indebted to L. C. Wilson and the Devonian Oil Company in the sum of \$512 for work and labor performed for, and for goods and chattels sold and delivered to, the defendant, for which the defendant promised to pay them; and, after getting the benefit of the labor and receiving the goods and chattels, the law will not allow the defendant, by special plea, to avoid its liability by averring that one of the parties with whom it contracted was a corporation, and incapable of forming a partnership. Whether the plaintiffs were partners or not, the liability was incurred by the defendant assuming the payment of the account to the plaintiffs jointly; and my conclusion is that the court erred in overruling the plaintiffs' objection to said plea, and allowing the same to be filed, and in dismissing the plaintiffs' action. The judgment complained of is therefore reversed, and the cause remanded.

Eyes Examined Free.

Dr. A. Weck manager of the optical department of the Gale Jewelry Company, will examine your eyes free. Defective vision and complicated cases specially invited to call. j26-1f

We are making a special run on FINE QUALITY DIAMONDS. Learn our prices for first-class goods. THE GALE JEWELRY CO.

AMUSEMENTS.

FIELDS' BIG MINSTRELS.

The name of Al. G. Field stands for clean and wholesome. He has established a reputation for giving refined performances. Each year Al. G. Field furnishes his patrons with a show different and better than that of the preceding season. This year it is claimed his big company contains many new and novel features, much that is better than he has offered before. A list of the company contains the names of many performers, vocalists and musicians who have reputations co-extensive with two hemispheres, including the famed Faust Family of Acrobats, the Nondescript Trio, the octette of solo singers, the funny comedians, the big cornet band, Everhardt, the German Jongleur, and the boy choristers, Tommy Donnelly, Harry Shunk, Doc Quigley, Dan. Quinlan, Fairman & Hyde and Al. G. Field. These names are a guarantee of a first-class performance. They will be seen at the Academy of Music on Tuesday evening next.



AL. G. FIELD.

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THE GREAT HERRMANN.

"The Great Herrmann" is coming next Wednesday evening, August 30th, is the announcement of the management of the Academy of Music. Herrmann, with his marvelous sleight of hand, his awe-inspiring illusions and his fun-loving proclivities that have delighted and entertained the inhabitants of all the civilized communities



LEON HERRMANN.

on the globe. The world still has a child's heart in its love of mystery. It never wearies of what plagues its curiosity or sense of wonder, and the entertainment which the Great Herrmann presents fills his audience with amazement. Leon Herrmann is a great illusionist and master of magic. For sixty years the name of Herrmann has stood for what is the best in the domain of magic.

OTHER LOCAL ON PAGE 8

The Saks Store

Breaking a Record.

Just a month ago we instituted our 1/2-Price Sale—as you'll remember. The progress of it rolled up a volume of selling that was phenomenal.

It was a matter of ambition with us to surpass the record of business done before.

It's a whole-store event—touching this season's needs—and next.

The sale ends Thursday evening—and here are some of the offerings in Men's Clothing. They'll fill a want, we are confident:

If you want a Suit, warranted fast color and all wool, made up in the latest style, there are about 235 rare values left, to be sold at just 1/2 their original prices.

If you want a pair of Trousers—and that's most likely—the 1/2-Price Sale is still in progress—offering better values than ever before.

Trousers worth \$3.00 for \$1.50.

Trousers worth \$4.00 for \$2.00.

Trousers worth \$7.50 for \$3.75.

150 Unlined Serge and Cheviot Coats, fast Blue and Black—Single and Double-breasted. The very same Coats that sell earlier in the season at \$4. Special..... \$2.00

100 Unlined Serge Coats, if for no other wear you'll find them handy in the office; worth \$3. Special..... \$1.50

150 Fancy Vests, in Silk, Worsted and Cheviot; big variety of patterns, many of them new effects that will figure as popular in the fall showing; Single, or Double-breasted; worth \$3 and \$5. Special..... \$1.88

Saks & Company,
234 AND 236 MAIN STREET

C. E. JENKINS.

New Dry Goods!

I am opening daily my new Camel's Hair Suitings, Homespuns Cheviots, Vermillion clothing, Covert Clothing Suiting, Flannels. Just think of a 45-inch Vention and Covert Cloth, at 50c. Also English Kerseys, in all colors.

These goods will be offered at above prices on Monday, with many other bargains.

The balance of my Wash Goods will almost be given away on Monday. Come and save money while you can.

C. E. JENKINS,

New Store, Monticello Hotel.
Southern Bell Phone, 1099.

Attorneys:

All forms of Court Bonds issued promptly in the AMERICAN BONDING AND TRUST CO.

Call at office of
THE
Seaboard Fire Insurance Co.,
OR 'PHONE 238.

STENCIL CUTTERS,
Rubber and Steel Stamps, Railroad, Hotel, Baggage and Brass Checks, Seals, Badges, Stencils and Stamp Inks, Pads, Daters, etc. PHOENIX Stamp and Stencil Works, Job Printers, Cor. Nivison and Church Sts.

AUTUMN INKLINGS

Throughout the store there are sprinklings of Fall's various novelties. Just put on display a choice line of Ladies' Black and White Velvet Collars, decorated brilliantly in steel, jet and golden scales and spangles. Many others are mentioned in this writing. Search for them.

Popular Things in Black Silks.

Nothing wears so well as a Black Peau de Soie Silk. Nothing looks so rich as a rich Satin Duchesse. Nothing renders the subtle rustle of a Taffeta Silk.

Which of the three do you prefer?

Here are the prices:

Handsome Heavy Black Peau de Soie Silk, 21 inches wide, price \$1.00 a yard. The entire range \$1.25, \$1.50, \$1.75 and \$2.00 a yard.

Rich, fine quality Brilliant Satin Duchesse, 23 inches, price \$1.00. The whole range: 75, 80c., \$1.25, \$1.50 and \$1.75.

Extra fine Black Taffeta Silk, 23 inches, 85c. a yard. It's very fine. Other prices: 50c., 75c. and \$1.25.

21 inch soft, deep black Armure Silk, 75c. and 80c. a yard.

Autumn and Winter Arrivals.

The sultry and sickening summer season is nearly gone, and the cool autumn season will be here soon.

Fall Fabrics and Winter Wearables have already found their way here.

We've just opened up a full line of Fall and Winter Underwear for Men, Women and Children. A line with all classes, qualities and shapes. Popular prices prevail.

Just unboxed a line of beautiful, big, bright Figured Satteen and Silk Comforters. Some filled with soft French batting—others with genuine eider down. Prices range from \$2.00 to \$12.00.

Fashionable Fall Furs are now open. Buy now—you'll save money.

Handsome Plaid Lined Capes ready, too.

Black and Colored Dress Goods.

They will do wisely who will buy their Fall Skirts and Dresses now, because the choicest and prettiest productions always appear in the first display. These are Autumn's earliest inklings: 56-inch great big stylish grey mixed Plaids, all wool, \$1.25 a yard.

Handsome Camel's Hair Suitings, in the choicest plain colors, with rich, bright plaid backs, 56 inches, \$2.50 a yard.

48-inch pretty Combination Plaid of grey and green; soft camel's hair surface, \$1.25 a yard.

A pretty assortment of Plain, Melrose, Venetian and Hop Sack Suitings. Ask for Priestley's Wool Powderette for Mourning Dresses.

Black Russian Serge, the great wearer, 48 inches, 75c.

40-inch Sponged Camel's Hair Serge, 50c. a yard.

44-inch Black Poplin, 75c. a yard. Many others.

About Blankets.

Too warm to talk about Blankets? O yes, it's too warm to use them now, but it's the time to use your money. It won't be long, though, before you'll need them. So buy now. Consider these prices:

Full size 11-4 fine Wool Blankets, \$2.89.

That full size 11-4 five pound fine Wool Blanket; that \$5.00 one, at \$3.98, is positively a big Blanket Bargain.

Genuine All-wool Red Sultana 11-4 Blankets, \$4.89 a pair.

Extra size 12-4 fine White Wool Blankets, at \$4.89 a pair.

11-4 Silver Grey Wool Blankets, \$2.98.

We can't tell the merits of these Blankets in this short space. We only give you the size and price. We invite you to come.

Things for the House.

Make Dozier's your favorite place for Housekeeping Goods, and feel safe, for nothing but strictly first-class goods are allowed to enter, and the prices are strictly on a level with the lowest.

We've just thrown on the center counter some new German and Australian Flannelettes for wrappers, in pretty colors and patterns at 8 and 10c. a yard.

Fine Chinchilla, in dark plaids, 12 1/2c. a yard, for wrappers, etc.

52-inch soft and thick Table Felt, 39c. a yard.

Best Lancaster Gingham, 5c. a yard.

Best grades navy blue, red, grey and black and white Calicoes, 5c. a yard.

Largest size Sheets, 90x90, 50c. each.

H. S. Pillow Cases, 12 1/2c. each.

Large size Bed Spreads, 98c., ready hemmed.

MONDAY'S ASTOUNDING PIN OFFER.

1,000 papers of best 5c. English Pins, will sell at 1c. a paper. Here on Monday—not more than 5 papers to one buyer.

S. DOZIER

206 Main Street, Academy of Music Building.

NORFOLK, VA.

MONDAY'S WHITE SHIRT OFFER.

Our Men's excellent 50c. Unlaundered White Shirts, will sell at 35c. each. Here on Monday—not more than 6 to a buyer.